

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2742 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHOKKUMAR CHINUBHAI TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR SJ DAVE, AGP for Respondents 1 to 3
MR SUNIL C PATEL for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/06/97

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 18/2/1997 passed by the respondent no. 2 being the District Magistrate u/S. 3 of the Prevention of Black Marketing

and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'PBM Act').

4. The grounds of detention appearing at Annexure-B inter-alia contain the allegations with regard to how the petitioner has been committing breach of the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. It has been asserted that the petitioner has been the owner of diesel pump in the name and style of Shree Gayatri Petroleum Diesel Pump located at Highway no.2 at Ladvel Chokdi, Ladvel Taluka Kapadvanj. The Mamlatdar of Kapadvanj issued retail licence bearing no. 9 of 1988 for the period upto 31/12/1997. Inspection was carried out on 14/12/1996 and following irregularities/illegalities are alleged to have been found out :-

- (i) Verification of the stock of diesel in presence of Panchas disclosed shortfall of 401 litres after considering permissible shortfall.
- (ii) During the period between April 1996 and November 1996 short fall of 1811 litres of diesel was shown in the stock register, which is more than the prescribed limit.
- (iii) The density has been found to be more than the prescribed limit and the laboratory report disclosed difference of density (-) 0.0049 comparing the morning density recorded in the register dated 14/12/1996.
- (iv) Considering the facts noticed above, the petitioner is alleged to be responsible for preparing false accounts of diesel by adulterating the said article.

5. Under the aforesaid circumstances the petitioner has been directed to be preventively detained under the above provision of the P.B.M. Act finding that the petitioner is likely to continue his illegal activity, if he was not preventively detained as aforesaid.

6. The petitioner has challenged the impugned order of detention under the said order on number of grounds inter-alia on the ground appearing in clause (P) at page 15 of the petitioner. The same would read as under :-

"The petitioner respectfully submits that in case the detaining authority has forwarded the copies of the representation dated 25/2/1997 to all the concerned authorities then the State Govt. as

well as the Central Govt. have to satisfy this Hon'ble Court that the representation dated 25/2/97 made by the petitioner has been considered as expeditiously as possible. In failing to do so, the continued detention of the petitioner becomes bad in law either on the ground of non-consideration of the representation or on the ground of delay in considering the representation."

7. The Central Government in its affidavit-in-reply dated 15/4/1997 has in respect of the consideration of the representation said as under :-

"As regards contention made in para. (p), (r) and (t) it is pointed out that a representation dated 24/2/97 in favour of detenu forwarded by the State Government was received in the concerned section on 10/3/97. The parawise comments of the State Govt. on the representation dt. 24/2/97 was received in the concerned section on 13/3/97. After considering the contents of the representation alongwith parawise comments on the representation dt. 24/2/97 of the State Govt. and other relevant records the same was rejected by the Competent Authority in the Central Govt. The decision of the Central Government was conveyed to Superintendent, Central Prison Porbander on 27/3/97 by telegram with direction to convey the same to the detenu. The State Government was also informed simultaneously on the very same day."

8. Reading the aforesaid affidavit-in-reply, it has been submitted that there has been delay in considering the representation by the Central Government from 13/3/97 to 27/3/97 and this delay of 13 days has not been explained. It has, therefore, been submitted that the unexplained delay in considering the representation of the petitioner has violated the provision of Article 22(5) of the Constitution of India. Reference in this connection has been made to a decision of the Apex Court in the case of Aslam Ahmed v. Union of India reported in AIR 1989 SC 1403. There is a great deal of substance in this submission of Mr. Prajapati. The avoidable and unexplained delay as above has clearly resulted in rendering the continued detention of the petitioner illegal and constitutional impermissible.

9. As the petitioner succeeds on the aforesaid

ground of delay in considering the representation by the Central Government, it would not be necessary to deal with the other grounds of challenge levelled against the impugned order of detention.

10. In view of what is stated above, the impugned order of detention is quashed and set aside. It is directed that the detenu- Ashokkumar C. Trivedi shall be set at liberty forthwith, if he is not required in any other case. Rule made absolute accordingly.

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